

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CASE NO. 1:CR-07-467-01
	:	
	:	
v.	:	
	:	
	:	
MICHAEL LEE WUESCHINSKI	:	

MEMORANDUM

On June 8, 2015, this court denied Wueschinski's request for a reduction of sentence pursuant to 18 U.S.C. § 3582(c) and USSG 31B1.10, Amendment 782 to the Sentencing Guidelines (Doc. 78). The denial was based on the fact that Wueschinski was sentenced as a career offender pursuant to USSG § 4B1.1. Amendment 782 does not apply to career offenders.

On July 19, 2015, Wueschinski filed a motion for reconsideration (Doc. 79) in which he alleges that the Sentencing Commission, in a memorandum to Amendment 782, made it clear that a career offender may be given a two-level reduction at the "discretion of the judge." He also alleges that the Courts of Appeals for the Fifth Circuit and Eleventh Circuit supports this position.

The Commission's Reason for Amendment (Supplement to Appendix C, Nov. 1, 2014), states, in part:

Furthermore, existing statutory enhancements, such as those available under 18 U.S.C. § 924(c), and guideline enhancements for offenders who possess firearms, use violence, have an aggravating role in the offense, or are repeat or career offenders, ensure that the most dangerous or serious offenders will continue to receive appropriately severe sentences.

Id. at p. 74. No where does this court find the language as quoted by Wueschinski.

Amendment 782 amended § 2D1.1. It did not lower the sentencing range established for a career offender by § 4B1.1. Wueschinski claims there is a Fifth Circuit Court of Appeals case that allegedly gave a two-level reduction to a career offender but he does not give the case title nor a case citation. Wueschinski cites to a case, *United States v. Berry*, and alleges it is an Eleventh Circuit case but does not give a case citation. This court found a case entitled *United States v. Berry*, 356 Fed. Appx. 829 (6th Cir. 2009) which held that a defendant sentenced pursuant to USSG § 4B1.1 – a career offender – was not entitled to relief under Amendment 706 (a predecessor amendment to 782).

For the foregoing reasons, the motion for reconsideration will be denied. An appropriate order will be issued.

s/Sylvia H. Rambo
United States District Judge

Dated: June 30, 2015.